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MCI

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FEDERAL COMMUNICATIONS COMMISSION
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January 24, 1994

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: 92-296

Dear Mr. Caton:

Enclosed herewith for filing are the original and four (4) copies of MCI Telecommunications Corporation's Opposition to Petitions for Reconsideration in the above-captioned proceeding.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Opposition furnished for such purpose and remit same to the bearer.

Sincerely yours,

Elizabeth Dickerson

Elizabeth Dickerson
Manager, Federal Regulatory

Enclosure
ED/ms

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JAN 24 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of	)	
	)	
Simplification of the	)	CC Docket No. 92-296
Depreciation Prescription	)	
Process	)	

OPPOSITION TO PETITION FOR RECONSIDERATION

MCI Telecommunications Corporation ("MCI") hereby submits its opposition to the petitions for reconsideration filed in the above-captioned proceeding in response to the Report and Order[1] in which the Commission adopted the Basic Factor Range ("BFR") Option to simplify LEC depreciation prescription.

I. Introduction

In comments and reply comments filed on March 10, 1993 and April 13, respectively, MCI supported adoption of the BFR Option.[2] MCI was not convinced that the LECs had adequately demonstrated that the proposed depreciation simplification options would result in any meaningful savings or other benefits.[3] Since the BFR Option, however, "retain[ed] the greatest degree of oversight and most prevent[ed] possible abuse of the depreciation process by

[1] In the Matter of Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Report and Order, 8 FCC Rcd. 8025 (1993).

[2] Although MCI opined that it was premature to offer the LECs any relief from the degree of scrutiny with which the Commission supervised the depreciation process (and therefore urged retention of the current procedures), it recommended the BFR Option above the others the FCC advanced. (Comments of MCI, p. 8)

[3] Reply Comments of MCI, p. 2.

the LECs to serve their competitive ends,"[4] it was preferable to the other three alternatives. MCI urged the Commission to reject the Price Cap Carrier ("PCC") Option preferred by the LECs for several reasons. First, it inappropriately substituted flexibility for accounting and other regulatory safeguards[5] intended to prevent carrier abuse. Also, it would provide the LECs with the means to fund infrastructure development necessary for competitive service offerings, to the detriment of their monopoly ratepayers.

In comments and reply comments, and now in petitions for reconsideration, the LECs unanimously support the PCC Option. They criticize the Commission's principal reasoning in reaching its decision to adopt the BFR Option. They contend that market circumstances have changed dramatically since the date of release of both the original NPRM and the Report and Order in the instant proceeding. Specifically, they believe that the Commission's decision process disregarded the robust nature of today's telecommunications market. Also, they argue that there are adequate safeguards absent those available with the BFR Option that would support adoption of the PCC Option. Finally, they dispute the justification put forth by the Commission for why it

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[4] Comments of MCI, p. 2.

[5] While MCI has never been an advocate of accounting safeguards and continues to contend that only separate subsidiaries can adequately limit the carriers' opportunities to engage in cross-subsidization and other anti-competitive behavior, it nonetheless would opt for accounting safeguards over the alternative of no safeguards, i.e., carrier flexibility.

extended the PCC Option to AT&T, and not to the price cap LECs. MCI believes that, despite these LEC concerns, the Commission was correct in adopting the BFR Option, and it should not deviate from its original decision.

II. Market Circumstances Have Not Changed Significantly Since the Release of Either the Original NPRM or the Report and Order.

In the Report and Order, the Commission stated that "the competitiveness of the LECs' markets overall are not sufficiently robust to warrant any flexibility." (Report and Order, para. 28) The Commission concluded it did "not believe that the LECs yet face a level of competition that would permit granting the degree of flexibility provided by th[e price cap O]ption." (Id., para. 44)

Several carriers argue that the Commission should reconsider its decision to implement the BFR Option for the price cap LECs because circumstances (i.e., the level of competition) have changed significantly since the release of the original notice filed in this proceeding (December 10, 1992) and the release of the Report and Order (December 20, 1993). Specifically, US West contends that these changes have been "dramatic."[6] SNET submits that since that time, "the telecommunications environment has literally exploded into a frenzy of competitive activity which is directly affecting all local exchange carriers ..., and their access and local service customers."[7] SNET points to the "heightened levels of competition" that it attributes to the "pending mergers" of

[6] Petition for Reconsideration of US West, p. 2.

[7] Petition for Reconsideration of SNET, p. 2.

companies such as "MCI and Jones Lightwave, Inc.," and it states that "personal communications service ("PCS") is becoming a market reality."[8] Finally, USTA contends the Commission has not fully "assess[ed] the nature of today's interstate access competition."[9]

MCI believes that the LECs have failed to correctly identify the relevant market and have over-exaggerated the current level of effectiveness of competition in that market. The term "telecommunications" today goes far beyond the historical black, rotary-dial, plain old telephone service of yesteryear. The concept now conjures up visions of interactive video, the information highway, and multi-media conglomerates. Whether competition has matured in individual segments of this broad and evolving telecommunications market, however, is extraneous so long as there is no effective competition for provision of interexchange access services -- the regulation of which is the primary and relevant focus of this Commission proceeding, at least as regards the LECs.

The LECs have failed to point to a single event that has changed the interstate access environment since the initiation of this proceeding. Although they are swift to cite to announced mergers, mega-mergers, and joint ventures as support for the hypothesis that they require additional flexibility in order to confront competition, these announcements simply do not justify the change in regulatory scope that their preference for the PCC Option would permit. In fact,

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[8] Id., pp. 3,4.

[9] Petition for Reconsideration of USTA, p. 4.

very few of these mergers or ventures have been completed, and even those that are "done deals" have had virtually no impact on the alternate availability of access to the local exchange network. For example, the AT&T and McCaw merger has been pending for well over a year. Not only has this arrangement not yet been consummated, but once it is complete, it offers neither no new competitor nor any new spectrum to which IXCs could migrate traffic. In essence, it will have no more effect on competition for interstate access than the existence of the cellular duopoly has today. Also, MCI's recent annou-ncements of a joint venture with Jones Lightwave, Inc. and Scientific Atlanta and its intention to enter the local market through its MCI Metro subsidiary will provide no sudden escalation in competitive choices in the exchange access arena. First, the Jones trial is intended to test equipment capabilities, and it involves only a few hundred households in merely two locations. Further, construction of facilities for MCI Metro has commenced in only a single market. Should either of these ventures prove to offer viable competition to the current LEC monopoly -- and MCI certainly intends that they will ultimately provide less expensive alternatives for access to the local network -- such competition will evolve over time and on a geographic-specific basis. The Commission should ensure that such competition is allowed to emerge rather than -- as the LECs would prefer -- take action that would protect their monopoly foothold.

So long as effective competition does not exist for these historically monopolistic services, and so long as the Commission regulates the interstate access rates of these LECs, the regulatory focus must remain on safeguarding captive ratepayers from cross-subsidization of competitive ventures with revenues derived from these services. Simply put, announced business plans do not constructively change the current competitive environment (except to the extent that they encourage other market participants to announce similar endeavors). The Commission correctly has established its near term regulatory paradigm on its perception of the near term competitive environment. Only as effective competition develops should the paradigm change. Significantly, the Commission has acknowledged that the simplified depreciation rules that it has adopted for today may not be appropriate in the future: if "competition in the LECs' markets is sufficiently vigorous, [it] would be prepared to revisit this issue." (Report and Order, para. 28)

In this context, USTA's clamor for a study of competition is superfluous. All that is necessary to evaluate the state of competition of the access market is to poll the largest users of access services. MCI continues to purchase in excess of 99 percent of its access from the LECs. Even the proliferation of "competitive access providers" during the last several years has yet to make a significant -- or even measurable -- dent in the LECs' monopolies. As the second largest consumer of access services, MCI represents a significant bellwether of this relevant industry segment, and its purchasing trends must be taken as an indication of the true state of competitive access.

Besides, the issue of competition is not ripe for resolution in the instant proceeding. More appropriately, the Commission will look at the extent of competition and how regulation should evolve as competition flourishes in the framework of the LEC Price Cap Performance Review announced on January 19, 1994. GTE's bold assertion that "[t]he existing record establishes the reality of competition in the local exchange market"[10] is premature as the LECs -- or anyone else -- have yet to illustrate that any such competition actually exists.

III. The BFR Option Is Necessary to Provide Adequate Safeguards Against Carrier Abuse.

The Commission adopted the BFR Option because it "achieves the goals of the proceeding by providing "simplification, savings, and flexibility." (Report and Order, para. 26) It rejected the PCC Option because, contrary to the public interest, it "creates a significant opportunity and incentive for LECs to undermine the sharing component of [the FCC's] price cap plan...." (Id., para. 42) Also, "[t]he price cap carrier option is not saved by the LECs' suggested safeguards." (Id., para. 44) Nonetheless, USTA argues that "[t]he sum of the existing safeguards and incentives is certainly enough to protect the public interest, and indeed, to affirmatively serve it in connection with the Price Cap Carrier option."[11] GTE also contends that "the Report & Order fails to give adequate weight to existing safeguards...."[12]

[10] Petition for Reconsideration of GTE, p. 4.

[11] Petition for Reconsideration of USTA, p. 6.

[12] Petition for Reconsideration of GTE, p. 2.

MCI believes the Commission adequately and extensively explained why current safeguards do not allow adoption of a plan as flexible as the PCC Option. It has stated that "these safeguards do not address [its] view that competition for LECs must be more robust before they can move down the depreciation reform spectrum." (Report and Order, para. 45) Also, "such safeguards, while providing some minimal limitation on earnings management, still do not limit effectively the opportunity and incentive for carriers to avoid their sharing obligation." (Id. (emphasis added)) Additionally, the Commission notes, "GAAP places some limits on a carrier's ability to use depreciation expense to manage earnings, [but] GAAP is investor-focused." (Id. (emphasis added)) Further, the Commission suggests that while its "oversight and state commissions' oversight can provide some protection through filing requirements and monitoring, ... the approach that most appropriately balances ratepayer and company interests, is to ensure carriers do not use depreciation to avoid their sharing obligation in the first place." (Id., para. 47 (emphasis added)) Finally, the Commission rejects additional safeguards proposed by LECs, since their addition would effectively "produce a process more burdensome than the basic factor range option with less ratepayer protection." (Id., para. 48)

The Commission has fully and explicitly set forth the reasons it rejects reliance on safeguards in conjunction with adopting the PCC Option for LECs. Although the LECs continue to argue that the Commission has no basis for its conclusion that the safeguards referred to on the record (and cited in Appendix A to USTA's comments) will be ineffective,[13] this argument must be assessed in light of the LECs' insistence that effective competition exists and that the price cap sharing mechanism would have no influence over LEC depreciation decisions. The Commission has made no finding that competition is sufficient to guard against the potential for LEC abuse of the Commission's rules, and no such finding should be made on this record.

IV. The Commission Appropriately Adopted the PCC Option for AT&T, but not the Price Cap LECs.

The LECs complain that the Commission offers no justification for adopting the PCC Option for AT&T, while requiring the LECs to adhere to the BFR Option rules. Ameritech contends that "the Commission provided no explanation for its disparate treatment of AT&T and price cap LECs...."[14] Similarly, BellSouth states that "[t]he Report and Order does not discuss why comparable information filing requirements and other safeguards would not be sufficient to permit the adoption for the PCCO for the price cap LECs."[15]

The Commission has offered ample grounds for reaching the decision to not extend to the price cap LECs the same flexibility it has adopted for AT&T. First, "AT&T's price cap plan does not include a sharing component," thereby eliminating its "incentive to manage earnings to avoid sharing them with rate-

[13] Comments of USTA, p. 8.

[14] Petition for Reconsideration of Ameritech, p. 9.

[15] Petition for Reconsideration of BellSouth, p. 3.

payers." (Report and Order, para. 92) Also, "AT&T faces a more competitive market than the LECs," and very few AT&T services "remain fully under price cap regulation." (Id.) Such characteristics do not describe the LECs. The existence of the LEC sharing mechanism puts ratepayers at risk of receiving less or no sharing or increased rates; the existence of competition provides AT&T with the incentive to not overcharge ratepayers; and the limited regulation extended to AT&T is commensurate with the greater flexibility the PCC Option allows. To the contrary of LEC claims, the Commission has provided ample justification for its decision to not extend to the LECs the same flexibility as the PCC Option grants AT&T.

V. **Conclusion.**

For the foregoing reasons, MCI urges the Commission to reaffirm its decision to adopt the BFR Option for the simplification of the LECs depreciation prescription process.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION

Elizabeth Dickerson

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January 24, 1994

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on January 24, 1994.

Elizabeth Dickerson

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CERTIFICATE OF SERVICE

I, Susan Travis, do hereby certify that on this 24th day of January 1994, copies of the foregoing MCI Opposition to Petition for Reconsideration for CC Docket 92-296 were served by first-class mail, postage prepaid, unless otherwise indicated to the parties on the attached list.

Susan Travis

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